



In Reply To:

United States Department of the Interior

BUREAU OF LAND MANAGEMENT

Washington, D.C. 20240

<http://www.blm.gov>



DEC 9 2005

Honorable Orrin G. Hatch
United States Senate
Washington, DC 20510-4402

Dear Senator Hatch:

Thank you for your letter to Secretary of the Interior Gale Norton regarding Private Fuel Storage L.L.C.'s (PFS) proposal to construct an interim storage facility for spent nuclear fuel on reservation lands of the Skull Valley Band of Goshute Indians. Your letter notes a number of recent developments regarding this project and reiterates your concern about "the risks to public health associated with the location of this site, especially in light of the events of 9-11." The Bureau of Land Management (BLM) is the bureau within the Department of the Interior responsible for making a determination regarding the proposed rights-of-way for this project, so I have been asked to respond to your inquiry.

As you may know, BLM was a cooperating agency during the preparation of the Goshute project Environmental Impact Statement (EIS). As contemplated by the EIS, BLM has been awaiting the decisions of a number of other agencies before continuing the process of considering two right-of-way applications filed by PFS: in particular, the Nuclear Regulatory Commission (NRC) must issue a license for the project, and the Department of Defense (DOD) must complete a study and report examining the impact upon military readiness of proposed management changes to Utah national defense lands. One application seeks a right-of-way for a rail spur across BLM lands to transport spent nuclear fuel to the Goshute reservation; the other application seeks a right-of-way for an intermodal transfer facility on BLM lands. Approval of a land use plan amendment would be necessary before BLM could grant the application for the rail spur.

A decision by the NRC or DOD to act in this matter is not within the purview of the Department of the Interior. The Department is aware of a statement by the NRC that it intends to grant a license, but does not know whether the DOD has prepared either the study or report that is called for by the National Defense Authorization Act at 113 Stat. 852.

BLM has discretion in deciding whether to grant a right-of-way application filed, as here, under the Federal Land Policy and Management Act (FLPMA), 43 U.S.C. 1761. This discretion is implicit in newly revised regulations at 43 CFR Part 2800 (70 FR 21058 (April 22, 2005)). Section 2804.26(a) of these regulations sets forth a number of factors that BLM will consider in reviewing the applications of PFS. Among these factors are: (1) the project's consistency with BLM's management of the public lands; (2) the public interest; (3) the applicant's qualifications to hold a grant; (4) the project's consistency with FLPMA, other laws, or regulations; (5) the applicant's technical or financial capability; and (6) the applicant's compliance with information requests.

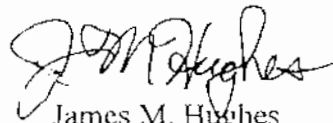
Your letter points out that since the Bureau of Indian Affairs gave preliminary and conditional approval to a lease for the proposed facility in 1997, a number of important and relevant events have occurred. You are quite correct that a significant amount of time has passed since this process began and since the cooperating agencies formally sought input. The right-of-way applications were filed in 1998, scoping began in 1998, and the EIS was finalized in 2001. As you note, the Secretary of Energy has recently stated that this project is not part of the Energy Department's long-term strategy for handling spent nuclear fuel, and some members of PFS have recently withdrawn their financial support for the project.

We therefore plan in the near future to publish a notice in the Federal Register seeking additional comments on the right-of-way applications for a period of 90 days. By soliciting comments BLM will have an opportunity to obtain additional information to more fully inform the decision makers.

During this comment period all interested parties will be allowed to submit new information that will illuminate whether granting or denying the right-of-way applications is consistent with BLM regulations, including whether it serves the public interest. Seeking additional input now should help avoid further delays in completing this process, as it may permit BLM to make its decisions more quickly once NRC and DOD complete their actions. While BLM may not amend its land use plan to grant a right-of-way for a rail spur until after the DOD submits its report to Congress, BLM can gather this necessary information now.

The Department of the Interior appreciates your interest in this matter. Please let me know if you have further questions or comments.

Sincerely,

A handwritten signature in dark ink, appearing to read "J M Hughes", written in a cursive style.

James M. Hughes
Deputy Director
Programs and Policy